

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-10 are pending in this application. By this Amendment, the specification and claims 1-10 are amended. No new matter is added. Claim 1 is the sole independent claim.

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O.

Applicants also appreciate the Examiner's indication that the Information Disclosure Statement filed on May 12, 2005, has been considered.

Applicants also respectfully note the present action indicates that the drawings have been accepted by the Examiner.

**Claim Rejections - 35 U.S.C. § 103**

Claims 1-7 and 9-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,820,329 ("Derbinski") in view of U.S. Patent No. 4,226,208 ("Nishida"). Applicants respectfully traverse this rejection for the reasons discussed below.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), all of the claim limitations of the rejected claims must be described or suggested by the cited document(s).<sup>1</sup> Applicants respectfully submit that the cited documents do not meet this criterion, because no combination and/or modification of the Derbinski and the Nishida references will describe or suggest all of the claim limitations of

rejected claims 1-7, 9, and 10, and therefore, a *prima facie* case of obviousness has not been established.

For example, claim 1, as amended, recites, *inter alia*:

**the housing halves under an action of a force-generating member is designed to be moved from a first position in which the housing halves, through tight, sealing contact with the revolver, prevent rotation thereof, to a second position in which the upper and lower housing halves are separated from the revolver in order to permit rotation of the latter to predefined positions.**

*(emphasis added)*

Applicants respectfully submit that the Derbinski reference does not disclose or suggest the above feature.

In the outstanding Office Action, the rejection is based on an assertion that the circular walls 12 and 13 correspond to the upper and lower housing halves in Derbinski.<sup>2</sup> Although a joint between the circular walls 12 and 13 can be seen in the drawings (FIG. 3) on the left and right side of the device, it is respectfully submitted, however, that the circular walls 12 and 13 are not movable with respect to each other; but merely walls permanently connected to each other.

In fact, the only device in Derbinski that is “actuated” is the chamber cover 46, in which the Examiner also states “....to actuate chamber recesses/covers such as 46 and 54....”<sup>3</sup> see, e.g., col. 4, lines 38-50 of Derbinski, in which it states:

When a wafer 35 is moved into the chamber 17 for processing, the chamber cover 46 is actuated to move rightwardly as viewed in FIG. 3 into contact with the sealing ring 27, deflecting it against the back wall 13 of the chamber 11, and forming a sealed processing chamber 47 that is isolated from the main chamber 11. As the cover 46 moves into sealing position, the backplane heat exchanger 45 moves into contact with the backside of a wafer 35 in the holder 30. This contact is feasible in part because of the open center of the body 31. The wafer

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<sup>1</sup> See *In Re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also MPEP § 2143.03.

<sup>2</sup> See Office Action mailed March 3, 2010, page 3, paragraph 4.

<sup>3</sup> See Office Action mailed March 3, 2010, page 3, lines 10 and 11.

35 remains clamped between the ring 32 and the clips 33, enabling the heat exchanger 45 to effectively contact the back of the wafer 35. *(emphasis added)*

Accordingly, based on above, Derbinski discloses that it is the chamber cover 46 that is “actuated to move into contact with the sealing ring 27.” As such, the chamber cover 46 is thus understood to be the force generating member in Derbinski that moves the chamber cover from a first non-contact position to a second sealed contact position with the sealing ring, and not as in claim 1, “a force generating member moving housing halves from a first tight sealing contact position with the revolver, to a second position where the housing halves are separated from the revolver.” In other words, the device in Derbinski is disclosed to use force to create a chamber seal, whilst the device according to claim 1 is disclosed to use force to open a chamber seal (i.e., chambers are formed by the movement of the housing halves in contact with the revolver, and opened when housing halves are moved apart, away from the revolver).

Accordingly, Applicants respectfully submit that the Derbinski reference fails to disclose, or even suggest, “the housing halves under an action of a force-generating member is designed to be moved from a first position in which the housing halves, through tight, sealing contact with the revolver, prevent rotation thereof, to a second position in which the upper and lower housing halves are separated from the revolver in order to permit rotation of the latter to predefined positions,” as recited in amended claim 1.

In regard to the Nishida reference, it is respectfully submitted that Nishida only relates to a vacuum processing apparatus which is even less related than Derbinski with respect to the device according to claim 1.

Even if the skilled person would turn to Nishida (in which Applicants do not admit to or agree to), Nishida does not remedy the deficiencies of Derbinski. In particular, the Examiner asserts that Nishida discloses upper and lower housing halves joined by a flexible sealing member 86 with reference to FIG. 2, 86 and column 2, lines 56-60.<sup>4</sup> see col. 2, lines 56-60, in which it states: "...a vacuum container 76 formed by a round base plate 74 and a vacuum vessel 78, the latter being sealed on the base plate 74 by an annular rubber gasket 86". Applicants respectfully disagree.

Firstly, Nishida does not appear to disclose "housing halves peripherally joined by a flexible sealing member". One skilled person in the art would not consider a gasket to have a joining effect. The gasket appears only to have a sealing effect because of the selected construction of the device where the vessel 78 and base plate 74 form the vacuum container 76 and, therefore need to be mounted to each other in a sealed, vacuum tight manner.

Secondly, as discussed above with respect to Derbinski, Nishida also fails to disclose "... the housing halves under the action of a force-generating member being designed to be moved from a first position in which the housing halves, through tight, sealing contact with the revolver, prevent rotation thereof, to a second position in which the upper and lower housing halves are separated from the revolver in order to permit rotation of the latter..." The housing halves in Nishida, that is, the base plate 74 and vessel 78 in contact with the rubber gasket 86, are in fixed positions and nothing is disclosed about them being movable in relation to each other. Thus, in Derbinski, there are movable parts forming treatment containers/chambers in Nishida, but there are no housing halves being moved in relation to each other to form the treatment

<sup>4</sup> See Office Action mailed March 3, 2010, page 4, paragraph 6.

containers/chambers, as in the device according to claim 1.

See also e.g., col. 3, lines 32-39 of Nishida, where a bell jar 32 is pressed against the base plate 74 by hydraulic means when a chamber 64 is opened in order to retain vacuum in the container 76. That is, there is no housing half being moved, and the actuating force, is, as in Derbinski, used to create seal, not to open a seal as in the device of claim 1.

Since the rejection fails to disclose or suggest each and every element of the rejected claims, Applicants respectfully submit that no *prima facie* case of obviousness has been established with respect to claim 1.

Further, in order to establish a *prima facie* case of obviousness, the Examiner must establish that it would have been obvious for one of ordinary skill to have combined the teachings of the cited documents.<sup>5</sup> One way to establish this would be to show “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” and “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”<sup>6</sup> Furthermore, the Examiner must make “*explicit*” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.”<sup>7</sup>

It is respectfully submitted that the Examiner has not met these criteria. For example, the Examiner asserts that:

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<sup>5</sup> See *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. at 398, 82 USPQ2d at 1396 (2007).

<sup>6</sup> *Id.*

[i]t would have been obvious to one of ordinary skill in the art at the time the Applicant's invention was made to have provided the upper and lower halves of the vacuum device in Derbinski et al. joined by a flexible sealing member in order to form a sealed vacuum container as taught by Nishida et al.

However, it is respectfully submitted that the above statement is merely conclusory and do not comprise an "*explicit rationale*" as required by *KSR Int'l*. Therefore, because the Examiner has not provided an explicit analysis as required by *KSR Int'l*, a *prima facie* case of obviousness has not been established.

In view of the above, Applicants respectfully submit that the Derbinski and the Nishida references, individually or in combination, fail to teach or suggest each and every element of claim 1, and therefore, claim 1 is allowable over the cited prior art. Claims 2-7, 9, and 10 are dependent from claim 1, and therefore, also allowable. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Derbinski and Nishida and further in view of U.S. Patent No. 5,415,729 ("Strasser"). Applicants respectfully traverse this rejection for the reasons discussed below.

Claim 8 is believed to be allowable for at least the reasons set forth above regarding claim 1. The Strasser reference fails to provide the teachings noted above as missing from the Derbinski and the Nishida references. Since claim 8 is patentable at least by virtue of its dependency on claim 1, Applicants respectfully request that the rejection of claim 8 under 35 U.S.C. § 103(a) be withdrawn.

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<sup>7</sup> *Id.*

**CONCLUSION**

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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